



RECEIVED
JUN 18 2003
GROUP 1700

AAC/1 CIP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Donald F. Albert et al.
Application No. : 09/972,163 Confirmation No. : 5897
Filed : October 4, 2001
For : ORGANIC, OPEN CELL FOAM MATERIALS,
THEIR CARBONIZED DERIVATIVES, AND
METHODS FOR PRODUCING SAME
Group Art Unit : 1771
Examiner : Hai Vo

Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REPLY TO RESTRICTION REQUIREMENT

This is in response to the May 14, 2003 Office
Action in the above-identified application. A response is
due on or before June 14, 2003 Accordingly, this reply is
timely filed.

Express Mail Label No.
EH623266201US

The Restriction Requirement

The Examiner has required restriction of the claims of this application under 35 U.S.C. § 121 into one of the following groups:

Group I: Claims 1-38, 40-51, 53, 84, 85, 90-112, 114-126, and 128, drawn to an organic small pore area material;

Group II: Claim 39 drawn to a sol-gel polymerization process;

Group III: Claims 52, 86-89, 113, and 127 drawn to a porous material;

Group IV: Claims 54-66, 68-83, and 129-139 drawn to a method of making an organic small pore area material; and

Group V: Claim 67 drawn to a composition of matter.

The Examiner states that Groups (I, II, V) and Groups (II, IV) are related as process of making and product made, that Groups I, III, and V are unrelated, and that Groups II and V are unrelated. The Examiner further states

that, the related inventions are distinct because the processes as claimed can be used to make other and materially different products.*

Applicants elect Group I without traverse for further prosecution in the present application. Pursuant to MPEP 821.04, applicants may request rejoinder of Group IV claims that depend from, or otherwise include all the limitations of, an allowable product claim with the elected Group if and when any of the Group I claims are found to be allowable.

Applicants make this election of Group I claims without waiver of their rights to file divisional or continuing applications, directed to any non-elected subject

* Applicants respectfully submit that the inventions of claim 39 (Group II) and claim 67 (Group V) are not distinct. Claim 39 is drawn to a sol-gel polymerization process using acetic acid. Claim 67 is drawn to a composition of matter prepared by a sol-gel polymerization process using acetic acid. Thus, contrary to the Examiner's contention, the process as claimed cannot be used to make a materially different product than that of claim 67. However, because the claims of these Groups are not being elected at this time, applicants will not burden the Examiner with further arguments in connection with these Groups. Applicants reserve the right to argue that the inventions of Groups II and V are not distinct should the claims of these Groups be prosecuted in the future.

matter, which claim priority from this application under
35 U.S.C. § 120.

Respectfully submitted,

Denise Bergin
Marta E. Gross (Reg. No. 33,504)
Pablo D. Hendler (Reg. No. 40,015)
Denise Bergin (Reg. No. 50,581)
Attorneys for Applicants
Nina R. Horan (Reg. No. 47,662)
Agent for Applicants
FISH & NEAVE
Customer No. 1473
1251 Avenue of the Americas
New York, New York 10020-1104
Tel.: (212) 596-9000
Fax : (212) 596-9090